

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNITED STATES POSTAL SERVICE,

Respondent,

and

AMERICAN POSTAL WORKERS UNION,
LOCAL 1070, AFL-CIO,

Charging Party.

Case 24-CA-090192
24-CA-096216
24-CA-096482
24-CA-096751
24-CA-097060
24-CA-097087
24-CA-097089

Enrique Gonzalez Quinones and Vanessa Garcia, Esqs.,
for the General Counsel.

Rebecca Horan, Esq., St. Louis, MO, for the Respondent.

Juan Carlos Gonzalez-Del Valle, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. These cases were tried in San Juan, Puerto Rico on August 27, 2013.¹ The American Postal Workers Union, Local 1070, AFL-CIO (the Union) filed the charges and amended charges in the above-captioned cases between September 17, 2012 and March 27, 2013,² and the General Counsel issued a complaint on December 31 and an amended complaint on March 29. The complaint, as amended, alleges that the United States Postal Service (the Postal Service) violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act)³ by unreasonably delaying in providing the Union with relevant information under their collective-bargaining agreement. For a remedy, the Union seeks a broad cease and desist order and an affirmative bargaining order. The Postal Service denied the allegations in the complaint, but now concedes that it delayed in providing information which the Union was entitled to under the collective-bargaining agreement. It objects, however, to the General Counsel's request for a cease and desist order with broad application to all Postal Service facilities within the Caribbean District.

¹ At the commencement of the hearing, the General Counsel submitted an Order issued by the Regional Director that morning advancing the hearing in Case 24-CA-100739 from August 21 to August 20 in order for that case to be heard together with the above-captioned cases. (Tr. 6.)

² All dates are between August 2012 and March 2013, unless otherwise indicated.

³ 29 U.S.C. Secs. 151-169.

Settlement discussions continued until just before the hearing commenced. I was informed that the Postal Service would amend its answer to admit all of the amended complaint allegations and that the only stumbling block was the remedy. The General Counsel insisted on a cease and desist order to be posted at every Postal Service facility within the Caribbean District. The Postal Service expressed a willingness to agree to a cease and desist order, but only one that was limited to the facility at issue in this case.

Ultimately, the parties could not agree and the Postal Service proposed a unilateral settlement agreement for my approval pursuant to Board Rule 101.9(d). Since I was already at the hearing site and all parties prepared to proceed, I reserved decision on the Postal Service's application and received brief testimony relevant to a remedy.⁴ Upon review of the record, it is evident that the charging party did not agree as to the entirety of the proposed settlement. Moreover, the proposal was submitted to me only after I arrived at the hearing location in San Juan, Puerto Rico. Having heard all of the relevant, albeit brief testimony, I decline to accept the proposed unilateral settlement pursuant to *Independent Stave Co.*, 287 NLRB 740, 743 (1987).

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Postal Service, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Postal Service provides postal services for the United States and operates various facilities throughout the United States in the performance of that function, including the DMDU Annex facility, located in Cataño, a municipality in the Commonwealth of Puerto Rico. The Postal Service admits, and I find, that the National Labor Relations Board (the Board) has jurisdiction over this matter pursuant to Section 1209 of the Postal Reorganization Act of 1970, 39 U.S.C. 1201 et seq., and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Parties

The Postal Service's Caribbean District encompasses two Caribbean neighbors, the United States Commonwealth of Puerto Rico and the United States District of the Virgin Islands. The Caribbean District consists of approximately 132 facilities divided into four Zip Code Clusters. Facilities and zip codes within the Virgin Islands fall under 008, while Puerto Rico is divided into 3 clusters: 006 for zip codes in the west; 007 for zip codes in the east; and 009 for zip codes in the San Juan metropolitan area. Each cluster is managed by a Post Office Operations

⁴ R. Exh. 1; Tr. 15-20.

Manager (POOM). The DMDU Annex facility is organizationally included within Zip Code Cluster 009 and is managed by Plant Manager Lisa Ojeda.⁵

The following Postal Service employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees in the bargaining unit for which it has been recognized and certified at the national level – maintenance, motor vehicle, postal clerks, mail equipment shop, and material distribution employees.

At all material times, the Union has been designated and has served as the Unit's collective bargaining representative, and recognized as such by the Postal Service. This recognition has been embodied in successive collective bargaining agreements, the most recent of which is effective, by its terms, from 2011 to 2015.

B. The Union's Information Requests

Between August 30 and December 29, the Union submitted the following requests for information relating to the operations of the DMDU Annex. All of the requests were necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of Unit employees.

On August 30, the Union requested in writing that the Postal Service furnish it with contract, installation and warranty information relating to water fountains at its San Juan facilities. The Postal Service, however, unreasonably delayed in furnishing the Union with such information until March 3.

On August 31, the Union has requested in writing that the Postal Service furnish it with: (1) "Three-reassignment waiting list of all craft to enter the Caribbean District;" and (2) a "list of employees waiting for change of craft to custodian." The Postal Service, however, unreasonably delayed in furnishing the Union with such information until October 26.

On October 13, the Union requested, in writing, that the Postal Service furnish it with the "PSE Seniority List in order (applying entry day and tie breaker method)." The Postal Service, however, unreasonably delayed in furnishing the Union with the requested information until March 9.

On October 30, the Union requested, in writing, that the Postal Service furnish it with the "Updated list of Change of Craft Requests within the same Installation." The Postal Service, however, unreasonably delayed in furnishing the Union with the requested information until March 3.

On November 5, the Union requested, in writing, that the Postal Service furnish it with the "Copy of DMDU Cataño Annex Credit Card bill from May 1, 2011 until November 1, 2012,

⁵ Juan Delgado, the Caribbean District's Manager of Human Resources, credibly testified regarding his district's organizational structure. (Tr. 21-28.)

used to pay Alpine Cooler.” The Postal Service, however, unreasonably delayed in furnishing the requested information until March 3.

On November 11, the Union requested, in writing, that the Postal Service furnish it with:
 5 (1) “Space Requirement to the APBS, LCUS SWYB and other Operations,” and (2) “PS form Form 919, 929.” The Postal Service, however, failed and refused to furnish the Union with the requested information regarding the Space Requirement to the APBS, LCUS SWYB and other Operations, and unreasonably delayed in providing the Union with the PS form Form 919, 929 until March 3.

10 On December 7, the Union requested, in writing, that the Postal Service furnish it with the “3972 of Luis Fernandez for pay period 10.” The Postal Service, however, failed and refused to furnish the Union with the requested information.

15 On December 10, the Union requested, in writing, that the Postal Service furnish it with “Accession Reports for pay periods (PP): 1, 2, 4, 21, 22 and 23 for calendar year 2011, and pay periods 12, 20, 21, 24, 25 and 26 for calendar year 2012.” The Postal Service, however, unreasonably delayed in providing the Accession Report for pay period 24 until March 14. As to the remainder of the request, the Postal Service failed and refused to furnish the
 20 information.

On December 18, the Union requested, in writing, that the Postal Service furnish it with the following information: (1) Bidding history of Kevin Rodriguez; (2) Updated Human Resources list for change of craft to custodial; (3) Copy of the letter sent to employees
 25 concerning the change of craft list with the intention of filling a labor custodial position; (4) Copy PRD-10 of the following facilities: Boquer6n, Can6vanas, Cotto Laurel PO, Dorado, Florida, Isabela PO, Sabana Hoyos, and Salinas PO; (5) Copy of the contract or document to perform labor custodial duties for the same facilities, as listed in (4) above; (6) “Accession Report, effective date of vacancy of position no. 95442464 vacated by Aurea Quiles”; and (7)
 30 Copy of the job history of position no. 95442464; (8) Copy of the bidding history of employee Aurea Quiles. On December 26, the Union requested, in writing, that the Postal Service furnish it with the “Updated seniority of laborer custodial.” The Postal Service, however, failed and refused to furnish the Union with the requested information.

35 On December 19, the Union requested, in writing, that the Postal Service furnish it with a “Copy of the contract to perform duties of mail processing equipment at the dumper of the APBS feeder on 12119/12.” The Postal Service, however, failed and refused to furnish the Union with the information requested.

40 On December 22, the Union requested, in writing, that the Postal Service furnish it with a “Copy of the Updated Emergency Evacuation Plan.” The Postal Service failed and refused to furnish the Union with the information requested.

45 On December 23, the Union requested, in writing, that the Postal Service furnish it with the following information: (1) “Laborer Custodial Seniority List Updated”, and (2) “PRD-10 of PSE's.” The Postal Service, however, unreasonably delayed in furnishing the Union with the

"Laborer Custodial Seniority List Updated" until March 3, and failed and refused to furnish the Union with the "PRD-10 of PSE's."

On December 26, the Union requested, in writing, that the Postal Service furnish it with the following information: (1) Copy of the salary history of welder Luis Casilla, and (2) "Copy of the interview panel consensus final rating sheet of laborer custodial Jorge Flores for BEM position, for interview held on September 12, 2012." The Postal Service, however, unreasonably delayed in furnishing the Union with a "Copy of the salary history of welder Luis Casilla" until March 9, and failed and refused to furnish the "Copy of the interview panel consensus final rating sheet of laborer custodial Jorge Flores for BEM position, for interview held on September 12, 2012."

On December 29, the Union requested, in writing, that the Postal Service furnish it with the following information: (1) "Copy of notification sent to the Union of change of Begin Tour for Job ID# 70041443;" (2) "All information relating the reassignment of Kevin Rodriguez from City Carrier to Laborer Custodial;" and (3) "Agreement between the Union and Management relating the reassignment of Kevin Rodriguez from City Carrier to Laborer Custodial." The Postal Service, however, failed and refused to furnish the information requested.

After delaying, failing or refusing to provide the aforementioned information to the Union, the Postal Service implemented remedial measures in order to avoid a recurrence of similar unfair labor practices. As a result, Senior Plant Manager Ojeda implemented procedures to ensure that DMDU managers and supervisors responded in a timely fashion to future information requests.⁶

LEGAL ANALYSIS

The Postal Service admitted that it violated Section 8(a)(5) and (1) of the Act by unreasonably delaying, failing and refusing to provide the Union, on 14 occasions between August 30 and December 29, 2012, with information that was necessary and relevant to the performance of its duties as the exclusive collective-bargaining representative of Unit employees. Moreover, the Postal Service does not object to issuance of a traditional cease-and-desist order. It does, however, object to the General Counsel's request for an Order directing the posting of such a notice at every Postal Service facility within the Caribbean District. The Postal Services argues that a broad cease-and-desist order is unwarranted and a traditional cease-and-desist order limited to the specific facility involved in this litigation is the appropriate remedy.

Broad cease-and-desist orders are appropriate when an employer is shown to have a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employee's fundamental statutory rights. *Hickmott Foods*, 242 NLRB 1357 (1979); *Postal Service*, 345 NLRB 409 (2005). The Board reviews the totality of the circumstances to ascertain whether the employer's specific unlawful conduct demonstrates an attitude of opposition to the purposes of the Act to protect the rights of employees generally. *Postal Service*, 345 NLRB at 410. Failure to respond to information

⁶ Lisa Ojeda, the Senior Plant Manager, provided credible testimony as to the measures taken *after* the violations occurred. (Tr. 32-33, 39-41.)

requests, although unlawful and a persistent problem, does not necessarily amount to egregious or widespread misconduct, and a lack of regard for employees' fundamental statutory rights. *See Albertsons, Inc.*, 351 NLRB 254, 260 (2007).

The Postal Service produced testimony by managers explaining their efforts to avoid similar recurrences in the future. The remedial steps undertaken by the Postal Service in this instance, however, were insufficient to undo the harm caused by its failure to timely provide relevant information necessary for the Union to effectively represent the interests of Unit employees. In *Postal Service*, 345 NLRB at 410, the Board considered the following factors in determining the scope of a cease-and-desist order: (1) the frequency of the failures to furnish information within a two year period at the same facility; (2) whether the violations occurred after issuance of a narrow cease-and-desist order (suggesting the inadequacy of the order to deter future violations); (3) whether the information requests related to grievance investigations (suggesting that repeated unlawful refusals to provide the information have the potential to hide other misconduct); (4) whether the Respondent presented a weak defense of its actions; (5) the extent of the history of information request violations at Respondent's locations nationwide within the past two decades; (6) whether the Board previously issued broad cease-and-desist orders against Respondent for similar repeated information request violations at facilities within the same district; and (7) whether the Board's issued a concurrent decision against Respondent for the same violation.

While there is a lengthy history of similar violations and Board orders at other Postal Service facilities around the country, the facility at issue in this case is not included in that record. Moreover, there is no indication that the information requested related to grievance investigations. The General Counsel contends that the Board's recent decision in *U.S. Postal Service*, 359 NLRB No. 115 (2013), along with a recently authorized complaint and informal settlement agreement, evidence a pattern of similar violations. Vague references to a complaint and settlement agreement, however, do not constitute evidence of violations. Moreover, in its recent *U.S. Postal Service* decision, the Board did order the Postal Service to furnish the Union with requested information and post notices at its San Juan area facilities. The Board issued its order, however, only after a remand from the United States Court of Appeals for the First Circuit on the contentious issue of confidentiality interests applicable to personnel records of Unit employees and job applicants.

Only when an employer has an extensive history of violations, or a history of noncompliance with cease-and-desist orders, should a broad cease-and-desist order be granted. *Postal Service*, 345 NLRB at 411. The violations established here consist of delays in providing information to the Union regarding certain operations at the DMDU Annex in Cataño, Puerto Rico. There is no evidence of a previous violation in connection with this facility. Because no proven pattern or practice of unlawful activity exists at this and other facilities in the Caribbean District, a broad remedy requiring a District-wide notice positing is unwarranted. *See Consolidated Edison*, 323 NLRB 910, 911 (1997) (Board reversed judge's finding that the cease-and-desist order should be posted at all of the employer's facilities, not just the facility where the improper conduct occurred, as the unlawful activity affected only one employee at that facility).

As noted in *U.S. Postal Service*, 359 NLRB No. 115, slip op. at 5, however, the Board did require the Postal Service to post a traditional cease-and-desist order at its "San Juan, Puerto

Rico” facilities.⁷ The DMDU facility is located within the Postal Service’s San Juan area “cluster” of facilities. Accordingly, a cease-and-desist order will issue directing the Postal Service to post a traditional cease-and-desist order at its San Juan, Puerto Rico facilities, also referred to as Zip Code Cluster 009.

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CONCLUSIONS OF LAW

1. By unreasonably delaying, failing and refusing to provide the Union with information that was necessary and relevant to the performance of its duties as the exclusive collective-bargaining representative of Unit employees, the Postal Service has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of Act.

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2. The aforementioned unfair labor practices affected commerce within the meaning of Section 2(6) and (7) of the Act.

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REMEDY

Having found that the Postal Service has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. I shall recommend that the Postal Service be ordered to furnish the information requested to the Union and post an appropriate notice.

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On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁸

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ORDER

The Respondent, United States Postal Service, Puerto Rico, its officers, agents, successors, and assigns, shall

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1. Cease and desist from

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(a) Unreasonably delaying in furnishing the American Postal Workers Union, Local 1070, AFL-CIO (the Union) with requested information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the employees in the appropriate unit specified in the collective-bargaining agreement between the Respondent and the Union, which agreement is effective through 2015.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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⁷ This remedy language carried over from the Board’s earlier decision at 356 NLRB No. 75, slip op. at 5 (2011), in which it adopted that portion of the judge’s recommended remedy.

⁸ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Promptly furnish the Union with the information requested on relevant portion of the information requested relating to operations and Unit employees at the DMDU Annex on August 30 and 31, October 13 and 30, November 5 and 11, and December 7 and 10, 18, 19, 22, 23, 26 and 29, 2012.

(b) Within 14 days after service by the Region, post at its San Juan, Puerto Rico facilities within Zip Code Cluster 009, copies of the attached notice marked "Appendix"⁹ in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Sub-Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 30, 2012.

Dated, Washington, D.C. September 30, 2013

Michael A. Rosas
Administrative Law Judge

⁹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX**NOTICE TO EMPLOYEES**

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to furnish the American Postal Workers Union, Local 1070, AFL-CIO (the Union) with requested information that is relevant and necessary to its role as the exclusive collective-bargaining representative of employees in the unit specified in our collective-bargaining agreement with the Union, which is effective through 2015

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights listed above.

WE WILL furnish the Union with the information requested relating to operations and Unit employees at the DMDU Annex on August 30 and 31, October 13 and 30, November 5 and 11, and December 7 and 10, 18, 19, 22, 23, 26 and 29, 2012.

UNITED STATES POSTAL SERVICE

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

La Torre de Plaza, Suite 1002, 525 F. D. Roosevelt Avenue, San Juan, PR 00918-1002
(787) 766-5347, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (787) 766-5377.